RECENT CASES.

BANKRUPTCY—ALIMONY—EFFECT UPON—IN RE NOWELL, 99 Fed. Rep. 930.—*Held*, arrears in alimony upon which execution had not issued, did not in Massachusetts constitute a probable debt which a discharge in bankruptcy would bar. This is because its susceptibility to modification prevents its being a fixed, absolute liability. *Kerr* v. *Kerr* (1897) 2 Q. B. 439; *In re Lachemeyer*, Fed. Cas. No. 7966; *In re Shepard*, 97 Fed. 187; contra, *In re Houston* (D. C.) 94 Fed. 119, following the Kentucky law; *In re Van Orden* (D. C.) 96 Fed. 86, following New Jersey law, and *In re Challoner*, 98 Fed. 82, the law in Illinois.

BILLS AND NOTES—INNOCENT PURCHASERS—WRITTEN INSTRUMENT—DENIAL OF EXECUTION—WARMAN ET AL. v. FIRST NATIONAL BANK OF AKRON, OHIO, 57 N. E. 6 (Ill.).—The bank discounted two notes for appellant and gave credit to the payees thereon. In an action by the bank to recover it was *held*, that in order to prove that a bank discounting a note is an innocent purchaser, it is not enough to show that the proceeds were placed in the payee's credit, by way of deposit, but it must also be shown that the payee was not indebted to the bank at the time, and that he has not since then and before notice to the bank of the defenses to the note, withdrawn his account. Magruder, J., dissenting.

That the bank had possession of the notes was prima facie sufficient proof that it had acquired them bona fide for value, in the usual course of business. *Palmer* v. *Bank*, 78 Ill. 380. Possession of the notes indorsed in bank by the payee was prima facie evidence that the bank was their proper owner, and nothing short of fraud would have sufficed to overcome the effect of such evidence, or invalidate the title thus shown. *Collins* v. *Gilbert*, 94 U. S. 753.

CONSTITUTIONAL LAW—DUE PROCESS—ORDINANCE AS TO LICENSE FOR SALE OF CIGARETTES—DISCRETION OF MAYOR—GUNDLING v. CITY OF CHICAGO, 20 Supt. Ct. Rep. 633.—The city of Chicago passed an ordinance regulating the sale of cigarettes and imposing a license tax of $100, the fitness of the applicant to be determined by the mayor. Plaintiff was convicted for selling without a license.

Held, not to be a violation of the 14th amendment requiring due process of law, the power of the mayor was discretional and not arbitrary as in *Yick Wo* v. *Hopkins*, 118 U. S. 356, and that also whether a license fee of $100 partook of an excise tax or not, it violates no provision of the Federal Constitution, and was authorized by State.

CONSTITUTIONAL LAW—PERSONAL LIBERTY—ADVERTISING BUSINESS—USE OF FLAG—RUHSTRAT v. PEOPLE, 57 N. E. 41 (Ill.).—The Act April 22, 1899 (Ill), prohibited the use of the national flag for any commercial purposes, or as an advertising medium, and plaintiff was convicted for violation of that act and brings error. *Held*, the act was unconstitutional. Cartwright, C. J., Wilkins and Carter, J. J., dissenting. See Comment.

CONSTITUTIONAL LAW — SUNDAY LABOR—CLASS LEGISLATION—PETET v. STATE OF MINNESOTA, 20 Supt. Rep. 666.—The State of Minnesota passed a statute forbidding all labor on Sunday except such as was of charity or necessity, and further provided that keeping open barber shops on Sunday was not to be deemed within the exceptions. Under this, plaintiff was tried and convicted for keeping open on Sunday. *Held*, such act was valid, being within

the wise discretion of the State's police power, and was not class legislation. *Phillips v. Innes*, Clark F. 244; *State* v. *Frederick*, 45 Ark. 347; *Orient Ins. Co.* v. *Daggs*, 172 U. S. 557.

DAMAGES—TORTS—INTEREST ON LOSS—RECOVERY—N. Y., N. H. & H. R. R. Co. v. ANSONIA LAND & WATER Co., 46 Atl. Rep. 157 (Conn.).—Owing to negligence of defendant a section of railroad track was washed away, thus necessitating an expenditure by plaintiff of a sum A for repairs and a sum B for transfers meanwhile. The defendant might have known the amount of A at the time of the injury. In an action to recover interest for delay in settlement was allowed on A from date of accident; and also interest on B from the date the amount became known to defendant. *Held*, no error.

Whenever one has knowledge or means of knowledge as to the amount of damage another has suffered by his fault, there is an obligation of prompt compensation resting on him, and the sufferer is not bound to inform him, unasked, as to the amount of his loss, Under such circumstances if a suit has to be brought, damages for the delay may be added. *Parrott* v. *R. R. Co.*, 47 Conn. 575; *Hubbard* v. *R. R. Co.*, 70 Conn. 563. As B, the cost of transferring passengers and mail, was not a sum definitely ascertainable until the bill of particulars was filed, after that date damages for the delay were allowable. *Tighlman* v. *Proctor*, 125 U. S. 136; *New Haven Steam Saw Co.* v. *City of New Haven*, 72 Conn. 276, 287. Not only was the granting of the interest a proper exercise of discretionary power by the court, but the plaintiff had a right to such allowances.

EVIDENCE—ORAL TESTIMONY—WRITTEN AGREEMENT—DRYER v. SECURITY FIRE INS. Co., 82 N. W. Rep. 494 (Ia.).—Where the owner of personal property, being unable to read, was told by an insurance agent that he could move his property after taking out insurance without loosing his protection, but the written agreement in the policy forbade such removal. *Held*, the oral evidence admissible to vary the terms of the written agreement.

We have found no precedent with facts identical with those of the present case; similar decisions have been made, but the statements admitted to vary the terms of the written policy were contained in the application. The present case in admitting the verbal declarations of the agent for that purpose seems clearly a departure. *McComb* v. *Ins. Co.*, 83 Iowa 247; *Stone* v. *Ins. Co.*, 28 N. W. 47.

INTERSTATE COMMERCE—STATE REGULATION—CLEVELAND, CINCINNATI, CHICAGO & ST. L. R. R. v. ILLINOIS, 20 Supt. Ct., Rep. 723.—The State of Illinois passed a statute providing that all passenger trains should stop a sufficient length of time at the railroad stations of country seats to receive and let off passengers with safety. The railroad alleged that local traffic was already adequately provided for and such a requirement hampered their through trains. *Held*, it did constitute such a burden; that after local requirements have been satisfied, railroads have the legal right to adopt special provisions for through traffic, interference with which is unreasonable.

This case is a good illustration of what is and what is not a direct burden upon interstate commerce. The prior cases are collated and this seems to be in conformity with them.

INSURANCE—KNOWLEDGE OF AGENT—NORTHERN ASSUR. CO. OF LONDON v. GRAND VIEW BLDG. ASSOC., 101 Fed. 77—When an insurance company issues a policy containing a condition that it shall be void if there is other insurance on the property without consent of the company and unindorsed on the policy, and the agent who issues it knew of the existence of the other insurance but did not indorse it. *Held*, such knowledge estopped company from enforcing the condition.